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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 214

ADOLPH HOHENSEE,
Petitioner,

v.

NEWS SYNDICATE, INC., ETC.,
Respondent.

PETITION FOR REHEARING OF ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

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Respondent prays that this Court grant rehearing of its order contained in its *per curiam* opinion dated May 14, 1962, wherein the Court granted the petition for writ of certiorari, vacated the judgment, and remanded the case for consideration in light of *Goldlawr, Inc.* v. *Heiman*, 369 U. S. 463. Respondent further prays that said petition for writ of certiorari be denied.

REASON FOR GRANTING REHEARING AND DENYING THE WRIT

In its *per curiam* opinion granting the petition for writ of certiorari, this Court remanded the case for consideration in light of *Goldlawr, Inc.* v. *Heiman*, 369 U. S. 463. This Court, therefore, must have assumed that the elements essential to its decision in *Goldlawr* were also present in the instant action. Such is not the case.

The decision in the *Goldlawr* case, permitting a transfer under 28 U. S. C. § 1406(a), despite the absence of jurisdiction over the defendants, is predicated on the fact that venue did not lie in the district wherein the suit was commenced. The language of § 1406(a) is clear that improper venue is an indispensable requisite for a transfer under § 1406(a). It reads, inter alia, "The district court . . . in which is filed a case laying venue in the wrong division or district shall . . . transfer . . ."

The dissenting opinion of Mr. Justice Harlan and Mr. Justice Stewart calls attention to the fact that no transfer can be effected under § 1406(a) in an ordinary diversity suit where plaintiff brings suit in the judicial district where he resides because this would not be laying venue in the wrong division or district as is required to make § 1406(a) applicable.[1]

In the present case, unlike the *Goldlawr* case, venue properly lay in the district wherein the suit was filed because Petitioner filed his case, which is founded on diversity of citizenship, in the district wherein he is a resident, namely the Middle District of Pennsylvania.[2]

Consequently, since venue properly lay in the district wherein the suit was filed, a transfer cannot be effected under § 1406(a) as was possible in the *Goldlawr* case.

The absence of this indispensable requisite of "improper venue" was not brought to the attention of this Court in Respondent's brief filed in opposition to the petition for a writ of certiorari and Respondent respectfully requests

[1] 28 U. S. C. 1391(a) provides that a civil action founded on diversity of citizenship may be brought in the judicial district where all plaintiffs or all defendants reside.

[2] Paragraph 2 of the Complaint and Amended Complaint reads: "The Plaintiff, Adolph Hohensee, is an individual, residing in and a citizen of Greenfield Township, County of Lackawanna, State of Pennsylvania."

this Court to reconsider the petition for a writ of certiorari in light of this important distinction between the *Goldhaber* case and the present case.

CONCLUSION

For the reasons set forth above, it is respectfully urged that rehearing be granted and that, upon such rehearing, the petition for a writ of certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

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